

Senate Bill 110

By: Senators Unterman of the 45th, Thomas of the 54th and Smith of the 52nd

AS PASSED

AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to regulation of professions and businesses, so as to add a new Chapter 24A regulating the practice of massage therapy; to provide a short title; to provide legislative findings and intent; to provide for certain definitions; to create the Georgia Board of Massage Therapy; to provide for membership on the board; to provide for meetings of the board; to provide for powers of the board; to provide for licensure of massage therapists; to provide for provisional permits; to provide for applications under oath; to provide for licensing examinations; to provide for requirements relating to a license; to provide for violations; to prohibit the unauthorized practice of massage therapy; to provide for disciplinary actions; to provide for administrative procedures; to provide for exceptions; to provide for continuing education requirements; to provide for cumulative remedies; to provide for other jurisdictions; to provide for taxation; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to regulation of professions and businesses, is amended by adding a new Chapter 24A to read as follows:

CHAPTER 24A

43-24A-1.

This chapter shall be known and may be cited as the 'Georgia Massage Therapy Practice Act.'

43-24A-2.

The General Assembly acknowledges that the practice of massage therapy affects the public health, safety, and welfare. Massage therapists must have a knowledge of anatomy and physiology and an understanding of the relationship between the structure and function of the tissue being treated and the total function of the body. Massage is therapeutic and regulations are necessary to protect the public from unqualified practitioners. It is in the interest of the public to set standards of qualifications, education, training, and experience for those who seek to practice massage therapy; to promote high standards of professional performance for those licensed to practice massage therapy; and to protect the public from unprofessional conduct by persons licensed to practice massage therapy.

43-24A-3.

As used in this chapter, the term:

- (1) 'Advertise' means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or announcement on radio, or announcement or display on television, computer network, or electronic or telephonic medium.
- (2) 'Applicant' means any person seeking a license under this chapter.
- (3) 'Board' means the Georgia Board of Massage Therapy established by this chapter.
- (4) 'Board recognized massage program' means an educational program which meets the standards for training and curriculum as set out by the board in its rules which are consistent with the Nonpublic Postsecondary Education Commission as provided in Code Section 20-3-250.4.
- (5) 'License' means a valid and current certificate of registration issued by the board.
- (6) 'Licensee' means any person holding a license.
- (7) 'Massage therapist' means a person who administers massage or massage therapy for compensation.
- (8) 'Massage therapy' means the application of a system of structured touch, pressure, movement, and holding to the soft tissue of the body in which the primary intent is to enhance or restore health and well-being. The term includes complementary methods, including without limitation the external application of water, superficial heat, superficial cold, lubricants, salt scrubs, or other topical preparations and the use of commercially available electromechanical devices which do not require the use of transcutaneous electrodes and which mimic or enhance the actions possible by the hands; the term also

includes determining whether massage therapy is appropriate or contraindicated, or whether referral to another health care provider is appropriate. Massage therapy shall not include the use of ultrasound, fluidotherapy, laser, and other methods of deep thermal modalities.

(9) 'Person' means a natural person only.

(10) 'Provisionally permitted massage therapist' means a person issued a provisional permit under this chapter.

43-24A-4.

(a) There is created the Georgia Board of Massage Therapy which shall consist of five members. The board shall be assigned to the Secretary of State's office for administrative purposes and shall be under the jurisdiction of the division director and shall operate in accordance with and pursuant to the provisions of Chapter 1 of this title, as applicable.

(b) The Governor shall appoint, subject to confirmation by the Senate, all members of the board for initial terms of office beginning July 1, 2005. The Governor shall appoint two initial members of the board to serve for terms of two years and three initial members of the board, including the public member, to serve for terms of four years. After the initial terms specified in this subsection, members of the board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of four years and until their successors are appointed and qualified. Any person appointed to the board when the Senate is not in session may serve on the board without Senate confirmation until the Senate acts on that appointment. No member shall serve on the board for more than two full consecutive terms. Any vacancy due to death, resignation, removal, or otherwise shall be filled for the remainder of the unexpired term in the same manner as regular appointments.

(c) All members of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

(d) An appointee to the board shall qualify by taking an oath of office within 15 days from the date of his or her appointment. On presentation of the oath, the Secretary of State shall issue a commission to each appointee as evidence of his or her authority to act as a member of the board.

43-24A-5.

(a)(1) There shall be four professional members of the board who shall:

- (A) Be citizens of the United States and residents of this state for at least three years prior to the date of appointment;
 - (B) Have been engaged in massage therapy practice for compensation for at least five years immediately preceding their appointment; and
 - (C) Be eligible for licensure under this chapter. Effective July 1, 2006, and thereafter, all professional members of the board shall be licensed under this chapter.
- (2) No more than one professional member of the board may be an owner of or affiliated with any massage school.
- (b) There shall be one consumer member of the board who shall be appointed by the Governor from the public at large, shall be a citizen of the United States and resident of this state, and shall be a person to whom neither this state nor any other state or jurisdiction or organization has ever issued a certificate, registration, license, or permit to engage in the practice of massage therapy nor be an owner of or affiliated with any massage school.
- (c) The Governor, after notice and opportunity for hearing, may remove any member of the board for incompetence, neglect of duty, unprofessional conduct, conviction of a felony, failure to meet the qualifications of this chapter, or committing any act prohibited by this chapter.

43-24A-6.

The board shall meet at least once each year at a time fixed by the board. At its annual meeting, the board shall elect from its members a chairperson, vice chairperson, and any other officers as deemed necessary who shall hold office for a term of one year. Additionally, the board may appoint such committees as it considers necessary to fulfill its duties. In addition to its annual meeting, the board may hold additional meetings at the call of the chairperson or at the request of any two members of the board or as approved by the division director.

43-24A-7.

- (a) The board shall have the power to:
- (1) Examine and determine the qualifications and fitness of applicants for licenses to practice massage therapy in this state;
 - (2) Issue, renew, refuse to renew, deny, suspend, or revoke licenses to practice massage therapy in this state or otherwise discipline licensed massage therapists;
 - (3) Conduct investigations for the purpose of discovering violations of this chapter or grounds for disciplining persons licensed under this chapter;

- (4) Hold hearings on all matters properly brought before the board and, in conjunction therewith, to administer oaths, receive evidence, make the necessary determinations, and enter orders consistent with the findings. The board may designate one or more of its members as its hearing officer;
 - (5) Adopt, revise, and enforce rules concerning advertising by licensees including, but not limited to, rules to prohibit false, misleading, or deceptive practices;
 - (6) Adopt an official seal; and
 - (7) Bring proceedings to the courts for the enforcement of this chapter or any rules and regulations promulgated pursuant to this chapter.
- (b) In addition to the enumerated powers in subsection (a) of this Code section, the board has the authority to conduct its business pursuant to the provisions of Code Section 43-1-19 which is incorporated herein and made a part of this chapter by specific reference.

43-24A-8.

- (a) No person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the division director pursuant to this chapter.
- (b) Prior to July 1, 2007, any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:
- (1) The applicant is at least 18 years of age;
 - (2) The applicant is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
 - (3) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and
 - (4) The applicant has met at least one of the following requirements:
 - (A) He or she has completed successfully a board recognized educational program with a minimum of 500 hours of course and clinical work;
 - (B) He or she has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state;

- (C) He or she meets the qualifications necessary to sit for the National Certification Examination for Therapeutic Massage and Bodywork or has substantially similar qualifications as determined by the board;
 - (D) He or she holds a license as a massage therapist in another state or jurisdiction whose license requirements meet or exceed the licensing requirements of this state;
 - (E) He or she has practiced massage therapy for at least ten hours per week on average for at least ten years prior to the date of application and has completed at least 100 hours of formal training in massage therapy as determined by the board;
 - (F) He or she has practiced massage therapy for at least five years prior to the date of application and has completed a minimum of 200 hours of formal training in massage therapy as determined by the board;
 - (G) He or she has, to the satisfaction of the board, training in another state or jurisdiction that meets or exceeds the requirements for licensing in this state;
 - (H) He or she has been a member, as a massage therapist, for a period of one year prior to his or her application for licensure of a professional massage therapy association established before 2002 which holds its members to a published code of ethics; or
 - (I) He or she has been legally practicing massage therapy in this state for compensation prior to July 1, 2005.
- (c) On and after July 1, 2007, any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:
- (1) The applicant is at least 18 years of age;
 - (2) The applicant has a high school diploma or its recognized equivalent;
 - (3) The applicant is a citizen of the United States or a permanent resident of the United States;
 - (4) The applicant is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
 - (5) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check;
 - (6) The applicant has completed successfully a board recognized educational program consisting of a minimum of 500 hours of course and clinical work; and

(7) The applicant has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state.

43-24A-9.

(a) A provisional permit to practice as a provisionally permitted massage therapist may be issued for a two-year period by the board to the following applicants:

(1) An applicant licensed in another state with like or similar requirements for licensure;
or

(2) An applicant who is not the holder of any massage therapy license.

(b) Such permit shall authorize the applicant to work under the supervision of a licensed massage therapist as provided by the board.

(c) The applicant, by submitting an application for a provisional permit, agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check.

(d) Such provisional permit shall have the same force and effect as a permanent license until the time of its expiration.

(e) The provisional permit shall expire on the same date as a permanent license that is issued to persons who have passed the examination.

43-24A-10.

The board may require that all applications be made under oath.

43-24A-11.

(a) Examinations shall be administered to qualified applicants at least twice each calendar year.

(b) Applicants may obtain their examination scores in accordance with such rules and regulations as the board may establish.

43-24A-12.

(a) Any applicant for a license by reciprocity as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

- (1) The applicant is at least 18 years of age;
- (2) The applicant is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
- (3) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and
- (4) The applicant is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter.

43-24A-13.

(a) Any applicant for a license by endorsement as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

- (1) The applicant is at least 18 years of age;
- (2) The applicant is of good moral character. For purposes of this paragraph, 'good moral character' means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant's fitness to practice massage therapy;
- (3) The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and
- (4) The applicant either:
 - (A) Is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter; or
 - (B) Has current certification by the National Certification Board for Therapeutic Massage and Bodywork or an equivalent certification approved by the National Commission for Certifying Agencies.

43-24A-14.

- (a) The licensee shall display the license certificate or a photocopy thereof in an appropriate and public manner at each location at which he or she practices.
- (b) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the division director prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board and certifying that all current requirements of continuing education as determined by the board have been fulfilled. The board shall provide for penalty fees for late registration. The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only after application and payment of the prescribed reinstatement fee within the time period established by the division director, provided that the applicant meets such requirements as the board may establish by rule.
- (c) The licensee shall inform the board of any change of address within 30 days.
- (d) Each person licensed under this chapter is responsible for renewing his or her license before the expiration date.
- (e) Under procedures and conditions established by the board, a licensee may request that his or her license be declared inactive. The licensee may apply for active status at any time and upon meeting the conditions set forth by the board shall be declared active.

43-24A-15.

- (a) It is a violation of this chapter for any person to advertise massage therapy services unless such services are provided by a person who holds a valid license under this chapter.
- (b) It shall be a violation of this chapter for any person to advertise:
 - (1) As a massage therapist unless the person holds a valid license under this chapter in the classification so advertised; or
 - (2) Massage therapy services combined with escort or dating services or adult entertainment.
- (c) It shall be unlawful for a person or business entity or its employees, agents, or representatives to practice massage therapy or to use in connection with its name or business activity the terms 'massage,' 'massage therapy,' 'massage therapist,' 'massage practitioner,' or the letters 'M.T.,' 'L.M.T.,' or any other words, letters, abbreviations, or insignia indicating or implying directly or indirectly that massage therapy is provided or supplied unless such massage therapy is provided by a massage therapist licensed and practicing in accordance with this chapter.

43-24A-16.

The practice of massage therapy is declared to be an activity affecting the public interest and involving the health, safety, and welfare of the public. Such practice by a person who is not licensed to practice in this state is declared to be a public nuisance, harmful to the public health, safety, and welfare. Any citizen of this state, the board, or the appropriate prosecuting attorney where such practice is carried on by such unlicensed person may, on behalf of the public, bring an action to restrain and enjoin such unlicensed practice in the superior court of the county where such unlicensed person resides or works. It shall not be necessary in order to obtain an injunction under this Code section to allege or prove that there is no adequate remedy at law or to allege or prove any special injury.

43-24A-17.

The board shall take disciplinary action in accordance with the provisions of Chapter 1 of this title.

43-24A-18.

Proceedings under this chapter shall be governed by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

43-24A-19.

Nothing in this chapter shall be construed to affect, restrict, or prevent the practice, services, or activities of:

- (1) A person licensed, registered, or certified under any other chapter or article under Title 43 while engaged in the professional or trade practices properly conducted under authority of such other licensing laws, provided that such person shall not use the title of massage therapist;
- (2) A person pursuing a course of study leading to a degree or certificate as a massage therapist in an educational program recognized by the board, if such person is designated by title indicating student status and is fulfilling uncompensated work experiences required for the attainment of the degree or certificate;
- (3) A nonresident person rendering massage therapy up to 60 days during a 12 month period for treatment of a temporary sojourner only, provided that such nonresident massage therapist holds a license, registration, or certification from another state, jurisdiction, or country if the requirements as determined by the board for licensure are substantially equal to the requirements contained in this chapter or provided that such

nonresident massage therapist is currently nationally certified in therapeutic massage and bodywork;

(4) A person duly licensed, registered, or certified in another jurisdiction, state, territory, or a foreign country when incidentally in this state to provide service as part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event with which he or she comes into the state;

(5) A person who restricts his or her practice to the manipulation of the soft tissue of the human body to hands, feet, or ears who does not have the client disrobe and does not hold himself or herself out as a massage therapist;

(6) A person who uses touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy;

(7) A person who uses touch and movement education to effect change in the structure of the body while engaged in the practice of structural integration, provided that he or she is a member of, or whose training would qualify for membership in, the International Association of Structural Integrators and provided that his or her services are not designated or implied to be massage or massage therapy;

(8) A person who uses touch to affect the energy systems, polarity, acupoints, or Qi meridians, also known as channels of energy, of the human body while engaged within the scope of practice of a profession with established standards and ethics, provided that his or her services are not designated or implied to be massage or massage therapy; or

(9) A person who was engaged in massage therapy practice prior to July 1, 2005; provided, however, the prohibition of subsection (c) of Code Section 43-24A-15 shall apply to such a person on and after July 1, 2007.

43-24A-20.

The board shall establish continuing education requirements not to exceed 25 hours per biennium. The board shall by rule establish criteria for the approval of continuing education programs or courses. The programs or courses approved by the board may include correspondence courses that meet the criteria for continuing education courses.

43-24A-21.

As cumulative to any other remedy or criminal prosecution, the board may file a proceeding in the name of the state seeking issuance of a restraining order, injunction, or writ of mandamus against any person who is or has been violating any of the provisions of this chapter or the lawful rules or orders of the board.

43-24A-22.

This chapter shall not be construed to prohibit a county or municipality from enacting any regulation of persons not licensed pursuant to this chapter. No provision of any ordinance enacted by a municipality, county, or other jurisdiction that is in effect before July 1, 2005, and that relates to the practice of massage therapy or requires licensure of a massage therapist may be enforced against a person who is issued a license by the board under this chapter.

43-24A-23.

Notwithstanding any provision of law to the contrary, the act of a duly licensed massage therapist in performing a massage shall be deemed to be the act of a health care professional and shall not be subject to the collection of any form of state or local taxation regulations not also imposed on other professional health care activities.

43-24A-24.

- (a) Any person who practices massage therapy without a valid license in violation of this chapter, upon conviction thereof, shall be punished as provided in this Code section.
- (b) Each act of unlawful practice under this Code section shall constitute a distinct and separate offense.
- (c) Upon being convicted a first time under this Code section, such person shall be punished by a fine of not more than \$500.00 for each offense. Upon being convicted a second or subsequent time under this Code section, such person shall be punished by a fine of not more than \$1,000.00 for each offense, imprisonment for not more than 12 months, or both.

SECTION 2.

This Act will become effective when funding is appropriated.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.